IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.176 OF 2006
WITH
CIVIL APPLICATION NO.244 OF 2006

Centre Point Condominium. ..Appellant.

V/s.

The MHADA & Anr. ..Respondents.

Mr.Madhav Jamdar for appellant.

Mr.G.W.Mattoos with A.R.Patil, AGP for MHADA.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 28, 2006.

P.C. :

1. Ordinarily, the issues raised in this appeal can be conveniently answered in the pending notice of motion, which I am informed, is slated to be heard tomorrow before the trial Court.

2. Be that as it may, in terms of the order dated 8th March, 2006, joint measurement of the concerned land has been taken by the Superintendent Land Records. Demarcation of the concerned plots has been done. The counsel for the respondent No.1 has produced the map issued by the Superintendent Land Records prepared on the basis of Measurement dated 4th March, 2006.

3. In so far as this map and the demarcation is concerned, the same is acceptable to the appellant. The grievance of the appellant however, is that the identification of the boundary of the plot done by the officer on the site is not consistent with the plan prepared by the Superintendent Land Records, which is tendered across the bar.

4. Counsel for the respondent No.1 on the other hand, submits that the respondent No.1 has objection for three points identified during the joint measurement. Besides, the respondent No.1 states that the respondent No.1 is willing to lay pipe line within the "undisputed boundary as per the joint measurement done", without prejudice to pursue the objections with regard to the joint measurement report.

5. In my opinion, as this appeal arises out of the order passed at ad-interim stage, appeal as well as companion civil application can be disposed of by issuing following directions keeping all the questions on merits of the rival contentions open, to be considered and decided by the trial court in the pending proceedings.

(a) The trial Court shall finally decide the Notice of Motion expeditiously preferably by the end of April, 2006.

(b) All the questions arising for consideration in the said notice of motion will be decided on its own merits in accordance with the law, uninfluenced by the observations in the impugned order or for that matter the present order.

(c) The trial court may proceed with the hearing of the Notice of Motion tomorrow, if both the parties agree for such arrangement or may pass necessary order inviting City Survey Officer to examine the correctness of the stand taken by the appellant about the discrepancy in identifying boundary on the site as compared to the map of the demarcation prepared by the Superintendent Land Records. After inviting such report, the Notice of Motion can be proceeded further to resolve all the contentious issues between the parties.

(d) In the mean time, it will be open to the respondent No.1 to lay pipe line in the "undisputed area" within the boundary or plot of land belonging to the respondent No.1, without prejudice to pursue the objections with regard to the joint measurement if any. That process may be carried on keeping in mind that no further controversy is raised between the parties atleast to the extent of undisputed plot identified during the joint measurement.